

Senate Bill No. 1231

Passed the Senate June 2, 2010

Secretary of the Senate

Passed the Assembly August 19, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 6108 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1231, Corbett. Public contracts: state agency: sweatshop labor: slave and sweat free code of conduct.

Existing law requires every contract entered into by a state agency for the procurement of equipment, materials, supplies, apparel, garments, and accessories and the laundering thereof, excluding public works contracts, to require a contractor to certify that no equipment, materials, supplies, apparel, garments, or accessories provided under the contract are produced by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor, or exploitation of children in sweatshop labor. If a contractor knew or should have known the specified products furnished to the state were laundered or produced by the specified types of prohibited labor, the contractor may be removed from the bidder's list for 360 days. Existing law provides for misdemeanor liability in the case of a knowing false certification.

Existing law requires the Department of Industrial Relations to establish a contractor responsibility program, on or before February 1, 2004, including a Sweat Free Code of Conduct. Existing law also requires the appropriate procurement agency, in consultation with the Director of Industrial Relations, to employ an approach to implement the Sweat Free Code of Conduct, as specified. Existing law requires the Department of Industrial Relations to explore mechanisms to ensure that businesses that contract with state agencies are in compliance with those provisions.

This bill would rename the code of conduct as the Slave and Sweat Free Code of Conduct and would require every contract entered into by a state agency for the procurement of equipment, materials, supplies, apparel, garments, and accessories and the laundering thereof, excluding public works contracts, to require a contractor to certify that no equipment, materials, supplies, apparel, garments, or accessories provided under the contract are produced

by abusive forms of labor performed by all persons, not only abusive forms of child labor, as prescribed.

The bill would additionally extend the period that the contractor is removed from the bidder's list to 2 years, if the contractor knew or should have known the specified products were laundered or produced by the specified prohibited labor. This bill would require the Department of Industrial Relations to establish a contractor responsibility program on or before January 1, 2012, and would require specified actions by the Department of Industrial Relations and the Department of General Services with regard to the code of conduct.

This bill would additionally require contractors whose manufacturing and assembly locations are outside the United States to comply with international laws or treaties binding on their countries and would require a subcontractor to sign a certification regarding the code of conduct under the penalty of perjury. By changing the definition of existing crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 6108 of the Public Contract Code is amended to read:

6108. (a) (1) Every contract entered into by any state agency for the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, shall require that a contractor certify that no apparel, garments, corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of labor, or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict

labor, indentured labor under penal sanction, abusive forms of labor, or exploitation of children in sweatshop labor. The contractor shall agree to comply with this provision of the contract.

(2) The contract shall specify that the contractor is required to cooperate fully in providing reasonable access to the contractor's records, documents, agents, employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (1).

(3) Contractors shall exercise due diligence in ensuring that their subcontractors comply with the Slave and Sweat Free Code of Conduct. Contractors shall attach a copy of the Slave and Sweat Free Code of Conduct to the certification required by this subdivision and require each subcontractor to sign the certification under penalty of perjury.

(b) (1) Any contractor contracting with the state who knew or should have known that the apparel, garments, corresponding accessories, equipment, materials, or supplies furnished to the state were laundered or produced in violation of the conditions specified in subdivision (a) when entering into a contract pursuant to subdivision (a), may, subject to subdivision (c), have any or all of the following sanctions imposed:

(A) The contract under which the prohibited apparel, garments, or corresponding accessories, equipment, materials, or supplies were laundered or provided may be voided at the option of the state agency to which the equipment, materials, or supplies were provided.

(B) The contractor may be assessed a penalty that shall be the greater of one thousand dollars (\$1,000) or an amount equaling 20 percent of the value of the apparel, garments, corresponding accessories, equipment, materials, or supplies that the state agency demonstrates were produced in violation of the conditions specified in paragraph (1) of subdivision (a) and that were supplied to the state agency under the contract.

(C) The contractor may be removed from the bidder's list for a period not to exceed two years.

(2) Any moneys collected pursuant to this subdivision shall be deposited into the General Fund.

(c) Notwithstanding subdivision (b), a contractor that has complied with the provisions of paragraph (3) of subdivision (a) shall not be subject to sanctions for violations, of which the contractor had no knowledge, of the Slave and Sweat Free Code of Conduct that were committed solely by a subcontractor. Sanctions shall instead be imposed against the subcontractor that committed the violation.

(d) (1) When imposing the sanctions described in subdivision (b), the contracting agency shall notify the contractor of the right to a hearing, if requested, within 15 days of the date of the notice. The hearing shall be before an administrative law judge of the Office of Administrative Hearings in accordance with the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The administrative law judge shall take into consideration any measures the contractor has taken to ensure compliance with this section, and may waive any or all of the sanctions if it is determined that the contractor has acted in good faith.

(2) The agency shall be assessed the cost of the administrative hearing, unless the agency has prevailed in the hearing, in which case the contractor shall be assessed the cost of the hearing.

(e) (1) Any state agency that investigates a complaint against a contractor for violation of this section may limit its investigation to evaluating the information provided by the person or entity submitting the complaint and the information provided by the contractor.

(2) Whenever a contracting officer of the contracting agency has reason to believe that the contractor failed to comply with paragraph (1) of subdivision (a), the agency shall refer the matter for investigation to the head of the agency and, as the head of the agency determines appropriate, to either the Director of Industrial Relations or the Department of Justice.

(f) (1) For purposes of this section, “forced labor” shall have the same meaning as in Section 1307 of Title 19 of the United States Code.

(2) “Abusive forms of labor” means any of the following:

(A) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children or adults, debt bondage, and serfdom and forced or compulsory labor, including forced or

compulsory recruitment of children or adults for use in armed conflict.

(B) The use, procuring, or offering of a child for prostitution, for the production of pornography, or for pornographic performances.

(C) The use, procuring, or offering of a child or adult for illicit activities, in particular for the production and trafficking of illicit drugs.

(D) All work or service exacted from or performed by any person under the age of 18 years either under the menace of any penalty for its nonperformance and for which the worker does not offer oneself voluntarily, or under a contract, the enforcement of which can be accomplished by process or penalties.

(E) All work or service exacted from or performed by a child in violation of all applicable laws of the country of manufacture governing the minimum age of employment, compulsory education, and occupational health and safety.

(3) “Exploitation of children in sweatshop labor” means all work or service exacted from or performed by any person under the age of 18 years in violation of more than one law of the country of manufacture governing wage and benefits, occupational health and safety, nondiscrimination, and freedom of association.

(4) “Sweatshop labor” means all work or service exacted from or performed by any person in violation of more than one law of the country of manufacture governing wages, employee benefits, occupational health, occupational safety, nondiscrimination, or freedom of association.

(5) “Apparel, garments, or corresponding accessories” includes, but is not limited to, uniforms.

(6) Notwithstanding any other provision of this section, “forced labor” and “convict labor” do not include work or services performed by an inmate or a person employed by the Prison Industry Authority.

(7) “State agency” means any state agency in this state.

(g) (1) On or before January 1, 2012, the Department of Industrial Relations shall establish a contractor responsibility program, including a Slave and Sweat Free Code of Conduct, to be signed by all bidders on state contracts and subcontracts. Any state agency responsible for procurement shall ensure that the Slave and Sweat Free Code of Conduct is available for public

review at least 30 calendar days between the dates of receipt and the final award of the contract. The Slave and Sweat Free Code of Conduct shall list the requirements that contractors are required to meet, as set forth in subdivision (g).

(2) Every contract entered into by any state agency for the procurement or laundering of apparel, garments, or corresponding accessories, or for the procurement of equipment or supplies, shall require that the contractor certify in accordance with the Slave and Sweat Free Code of Conduct that no apparel, garments, or corresponding accessories, or equipment, materials, or supplies, furnished to the state pursuant to the contract have been laundered or produced, in whole or in part, by slave or sweatshop labor.

(3) The appropriate procurement agency, in consultation with the Director of Industrial Relations, shall employ a phased and targeted approach to implementing the Slave and Sweat Free Code of Conduct. Slave and Sweat Free Code of Conduct procurement policies involving apparel, garments, and corresponding accessories may be permitted a phase-in period of up to one year for purposes of feasibility and providing sufficient notice to contractors and the general public. The appropriate procurement agency, in consultation with the Director of Industrial Relations, shall target other procurement categories based on the magnitude of verified sweatshop conditions and the feasibility of implementation, and may set phase-in goals and timetables of up to three years to achieve compliance with the principles of the Slave and Sweat Free Code of Conduct. The appropriate procurement agency and the Department of Industrial Relations may use the United States Department of Labor's List of Goods Produced by Child Labor or Forced Labor, as it may be updated from time to time, in identifying procurement categories appropriate for phased implementation.

(4) In order to facilitate compliance with the Slave and Sweat Free Code of Conduct, the Department of Industrial Relations shall explore mechanisms employed by other governmental entities to ensure that businesses that contract with this state are in compliance with this section, and any regulations or rules promulgated with regard to this section, as amended by Section 2 of Chapter 711 of the Statutes of 2003. The mechanisms may include, but not be limited to, authorization to contract with a competent nonprofit organization that is neither funded nor controlled, in whole or in

part, by a corporation that is engaged in the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies.

(5) The Department of Industrial Relations, in complying with this subdivision, shall also consider any feasible and cost-effective monitoring measures that will encourage compliance with the Slave and Sweat Free Code of Conduct.

(6) The Department of Industrial Relations shall ensure public awareness and access to proposed contracts by postings on the Internet and through communication to advocates for garment workers, unions, and other interested parties. The Director of Industrial Relations and the Department of General Services shall establish a mechanism for soliciting and reviewing any information indicating violations of the Slave and Sweat Free Code of Conduct by prospective or current bidders, contractors, or subcontractors. The procedures and contact information for filing complaints shall be posted on the departments' respective Internet Web sites. Agencies shall make their findings public when they reject allegations against bidding or contracting parties.

(h) No state agency may enter into a contract with any contractor unless the contractor meets the following requirements:

(1) Contractors and subcontractors in California shall comply with all appropriate state laws concerning wages, workplace safety, rights to association and assembly, and nondiscrimination standards as well as appropriate federal laws. Contractors based in other states in the United States shall comply with all appropriate laws of their states and appropriate federal laws. For contractors whose locations for manufacture or assembly are outside the United States, those contractors shall ensure that their subcontractors comply with the appropriate laws of countries where the facilities are located or international laws or treaties binding upon those countries.

(2) Contractors and subcontractors shall maintain a policy of not terminating any employee except for just cause, and employees shall have access to a mediator or to a mediation process to resolve certain workplace disputes that are not regulated by the National Labor Relations Board.

(3) Contractors and subcontractors shall ensure that workers are paid, at a minimum, wages and benefits in compliance with applicable local, state, and national laws of the jurisdiction in which

the labor, on behalf of the contractor or subcontractor, is performed. Whenever a state agency expends funds for the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, the applicable labor standards established by the local jurisdiction through the exercise of either local police powers or local spending powers in which the labor, in compliance with the contract or purchase order for which the expenditure is made, is performed shall apply with regard to the contract or purchase order for which the expenditure is made, unless the applicable local standards are in conflict with, or are explicitly preempted by, state law. A state agency may not require, as a condition for the receipt of state funds or assistance, that a local jurisdiction refrain from applying the labor standards that are otherwise applicable to that local jurisdiction. The Department of Industrial Relations may, without incurring additional expenses, access information from any nonprofit organization, including, but not limited to, the World Bank, that gathers and disseminates data with respect to wages paid throughout the world, to allow the Department of Industrial Relations to determine whether contractors and subcontractors are compensating their employees at a level that enables those employees to live above the applicable poverty level.

(4) All contractors and subcontractors shall comply with the overtime laws and regulations of the country in which their employees are working.

(5) All overtime hours shall be worked voluntarily. Workers shall be compensated for overtime at either (A) the rate of compensation for regular hours of work, or (B) as legally required in the country of manufacture, whichever is greater.

(6) No person may be employed who is younger than the legal age for children to work in the country in which the facility is located. In no case may children under the age of 15 years be employed in the manufacturing process. Where the age for completing compulsory education is higher than the standard for the minimum age of employment, the age for completing education shall apply to this section.

(7) There may be no form of forced labor of any kind, including slave labor, prison labor, indentured labor, or bonded labor, including forced overtime hours.

(8) The work environment shall be safe and healthy and, at a minimum, be in compliance with relevant local, state, and national laws. If residential facilities are provided to workers, those facilities shall be safe and healthy as well.

(9) There may be no discrimination in hiring, salary, benefits, performance evaluation, discipline, promotion, retirement, or dismissal on the basis of age, sex, pregnancy, maternity leave status, marital status, race, nationality, country of origin, ethnic origin, disability, sexual orientation, gender identity, religion, or political opinion.

(10) No worker may be subjected to any physical, sexual, psychological, or verbal harassment or abuse, including corporal punishment, under any circumstances, including, but not limited to, retaliation for exercising his or her right to free speech and assembly.

(11) No worker may be forced to use contraceptives or take pregnancy tests. No worker may be exposed to chemicals, including glues and solvents, that endanger reproductive health.

(12) Contractors and bidders shall maintain a list of the names and addresses of each subcontractor to be utilized in the performance of the contract, and include each manufacturing or other facility or operation of the contractor or subcontractor for performance of the contract. The list, shall be updated to show any changes in subcontractors during the term of the contract, shall provide company names, owners or officers, addresses, telephone numbers, e-mail addresses, and the nature of the business association.

(i) Any person who certifies as true any material matter pursuant to this section that he or she knows to be false is guilty of a misdemeanor.

(j) The provisions of this section, as amended by Section 2 of Chapter 711 of the Statutes of 2003, shall be in addition to any other provisions that authorize the prosecution and enforcement of local labor laws and may not be interpreted to prohibit a local prosecutor from bringing a criminal or civil action against an individual or business that violates the provisions of this section.

(k) (1) The certification requirements set forth in subdivisions (a) and (f) do not apply to a credit card purchase of goods of two thousand five hundred dollars (\$2,500) or less.

(2) The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars (\$7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on these purchases.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2010

Governor